

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-vs-

13-CR-134

BRIAN CHRISTOPHER YOUNG,

Defendant.

Proceedings held before the
Honorable William M. Skretny, Buffalo
Courtroom, Robert H. Jackson Courthouse,
2 Niagara Square, Buffalo, New York, on
June 17, 2015.

APPEARANCES:

GEORGE C. BURGASSER,
Assistant United States Attorney,
Appearing for the United States.

LESLIE SCOTT,
Assistant Federal Public Defender.
Appearing for Defendant.

Michelle L. McLaughlin, RPR,
Official Reporter,
U.S.D.C. W.D.N.Y.

1 THE CLERK: Criminal case 2013-134S,
2 United States versus Brian Christopher Young.

3 THE COURT: We did issue a missing
4 person's report for you, Mr. Burgasser.

5 MR. BURGASSER: I wasn't far.

6 THE COURT: I'm going to withdraw it now.

7 MR. BURGASSER: Thank you, your Honor.

8 THE COURT: All right. Mr. Young, good
9 afternoon.

10 THE DEFENDANT: Good afternoon.

11 THE COURT: Miss Scott --

12 MS. SCOTT: Good afternoon.

13 THE COURT: Mr. Burgasser, good afternoon.

14 MR. BURGASSER: Good afternoon, your
15 Honor.

16 THE COURT: All right. This matter is set
17 for sentencing. I am ready to proceed with
18 sentencing. I have the report of Miss Blackman, I
19 think this is yours, revised as of May 22nd.

20 And, Miss Scott, you received that report, I
21 take it?

22 MS. SCOTT: Yes, your Honor.

23 THE COURT: Okay. I guess it's
24 technically Miss Ferraro's, and you're here for
25 her, is that right?

1 PROBATION OFFICER: That's correct, your
2 Honor.

5 MS. SCOTT: Yes.

6 THE COURT: All right. I'm going to seal
7 the report. And I am, however, relying on the
8 information in the report. And I think as you
9 know, Mr. Young, I'm going to set out a few things
10 before I hear from you, and that creates what's
11 known as the record. So, that will serve you in
12 the event that you choose to take an appeal.

13 Anybody that looks at what took place here will
14 have an exact account of what happened or didn't,
15 depending on what your arguments are. But, in
16 order to take an appeal, you must be appeal
17 eligible, and to get you there, either your
18 attorney or you has to file a Notice of Appeal
19 within that 14-day period. Do you understand?

20 THE DEFENDANT: Yes, sir.

1 sometimes it's called an appointed attorney, but
2 certainly Miss Scott from the Federal Public
3 Defender's Office will well serve your interests in
4 that regard. You always retain the right to
5 represent yourself. Frankly, rarely is that
6 recommended, and I think for what are usually
7 obvious reasons. If you're not lawyer trained,
8 it's difficult to handle complex matters when it
9 relates to, whether it's a plea or sentence or
10 trial. Almost always it's better to have an
11 attorney assist, because you, as an individual,
12 would be held to attorney standards, and that can
13 be a little dicey. Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. You know, I've
16 carefully considered your case. I am going to rely
17 on paragraphs 9 through 15, which are on pages 4
18 and 5 of the presentence report relative to support
19 for the plea and support for the sentence. But I
20 want to hear you and Miss Scott out first. She's
21 made some requests on your behalf, and I'm going to
22 address those as well.

23 And your plea was back on February 9th to the
24 charge of possession with intent to distribute
25 cocaine, which is a class C felony. I will be

1 including in my calculations under the guidelines
2 giving you an additional one level for acceptance
3 of responsibility, and that's the government's
4 request here, right?

5 MR. BURGASSER: That is correct, your
6 Honor.

7 THE COURT: Okay. And what I do have that
8 I want to address before going too much further is,
9 Miss Scott, your motion for a one-category
10 horizontal departure in criminal history, and
11 that's based on your argument that Mr. Young's
12 criminal history category of six, which is mandated
13 by -- and that's the highest of six numbers by the
14 career offender status -- overstates the
15 seriousness of your criminal past, Mr. Young, and
16 the likelihood that you may or would recidivate.

17 And under the authority of Section 4A1.3 and
18 the cases like the Mishoe case, which is
19 M-I-S-H-O-E, of the Second Circuit in 2009, I am
20 aware that I may lower your criminal history
21 category, even one that's driven by career offender
22 guidelines, if I find that if the number, the
23 calculation, does not adequately reflect the
24 seriousness of a defendant's criminal past or
25 likelihood that a defendant will commit other

1 crimes.

2 Now, I've looked at the policy arguments as
3 well in conjunction with the motion, and, you know,
4 I know that the career guideline has been
5 criticized and criticism has been leveled against
6 it really from all levels and all sides really.
7 But when I look at your case that's before me, and
8 I consider those what I call Mishoe factors, which
9 include, one, the amount of drugs involved in prior
10 offenses; two, a defendant's, like yours, role in
11 prior offenses; three, sentences previously
12 imposed; and four, the amount of time that a
13 defendant previously served compared to the
14 sentencing range called for in the criminal history
15 category 6 range, in my view, I don't have any
16 trouble concluding that the criminal history
17 category of six is adequate and does not overstate
18 the seriousness of your criminal past or the
19 likelihood that you may likely reoffend.

20 First, let me explain, as the parties agree,
21 you are properly considered a career offender
22 because you were over 18 years old at the time of
23 the current crime. This crime is a controlled
24 substance offense involving 9 ounces of cocaine,
25 and you had at least two prior felony convictions

1 of either crimes of violence or controlled
2 substances offenses. Second, your criminal history
3 is especially serious, including both violent and
4 drug related crimes. And as you know,
5 historically, from your conduct, that led to the
6 deaths of two people. At the age of 16 -- and I
7 know that's a while ago now. And, you know, at
8 least I think you're still 40 years old, right?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You know, at age 16 you hurled
11 a table leg at an individual in the middle of a
12 brawl at a basketball game, impaling the victim
13 through his back, and you ultimately pled guilty to
14 attempted manslaughter in the second degree and
15 were sentenced to 28 months to seven years
16 incarceration. And I think you served about six
17 years and two months for that offense. That's a
18 lot of time, I know.

19 At age 19 you were charged with murder in the
20 second degree after you and your brother and a
21 third person attacked an individual with a stick
22 and beat him about his head and body and ultimately
23 stabbed him in the chest, killing him. You were
24 convicted after trial of assault in the second
25 degree, and you were sentenced to 28 months to

1 seven years incarceration. I think -- I know you
2 served the full seven-year term.

3 And then finally at the age of 31 you were
4 twice convicted of criminal possession of drugs
5 with intent to sell. You committed those offenses
6 while on parole, stemming from your earlier violent
7 crimes convictions. You were sentenced to a
8 concurrent sentence of six years' incarceration,
9 and you served three years and six months of that.

10 In my view, this amounts to an extremely
11 serious criminal history. You know, I know that
12 two of the convictions occurred when you were a
13 teenager, but I nonetheless find that criminal
14 history category of six, dictated by the career
15 offender guideline, does not overstate the
16 seriousness of your criminal past or the likelihood
17 that you will recidivate.

18 Each time defendant was -- you were convicted
19 of a serious crime and sentenced to time in prison,
20 you did come out and you reoffended, and I'm taking
21 that into consideration. And you committed the
22 instant offense just six months after being
23 discharged from state parole supervision. You have
24 spent a considerable amount of time incarcerated
25 pursuant to the state sentences, and while the

1 federal sentence you now face is significant, it is
2 precisely the type of crime that makes you a
3 recidivist offender at which the career offender
4 guidelines' harsh punishment is targeted.

5 Consequently, your motion for a horizontal
6 departure from a criminal history category 6 to a
7 criminal history category 5 is denied. And the
8 proper numbers are 29 for the crime, criminal
9 history category 6, guideline range of 151 to 188
10 months. And I will proceed on that basis.

11 I mean, that's not a pretty picture, as you
12 know. And I know, you know, a lot of years have
13 lapsed from those early serious matters of violence
14 and involving the death of two individuals. But,
15 you know, a lot of drugs are involved here. A lot
16 of money's involved here. You know, when -- I
17 mean, going back to your early age, I mean, your
18 mother had a heck of a time with you and there were
19 a number of PINS petitions that were filed, and
20 we've got to deal with a sentence that's fair to
21 the public and to society as well as to you. I'll
22 try to do that in the end result, but, you know,
23 we're not talking about a situation that can just
24 be overlooked. It requires a sentence that sends
25 the message that, I mean, you're never too old to

1 learn, but you have to be punished and held
2 accountable. Punishment is not always the answer
3 as far as jail time is concerned. But, you know,
4 there has to be a meaningful sentence for somebody
5 that knows the ropes. You have to be held
6 accountable.

7 And I'm going to, I guess, lateral to you at
8 this point, Miss Scott, and we'll see where we come
9 out.

10 MS. SCOTT: Yes, your Honor. Thank you.
11 And I do understand the Court's concerns with
12 respect to Mr. Young's criminal history.

13 THE COURT: And I know I interrupted, but
14 I did read all the letters and I read your
15 submission as well. So, I just wanted you to know
16 that.

17 MS. SCOTT: Thank you, Judge. I knew you
18 did that. And I just want to start I think by
19 saying that with respect to the horizontal motion,
20 I'm not going to make any arguments. I understand
21 the Court's ruling completely. I just want to make
22 it clear that nothing that was said in that motion
23 was to minimize or shy away at all from the very
24 serious nature of Mr. Young's criminal history.
25 That cannot be overlooked, nor should it be

1 overlooked.

2 My arguments were geared towards the person who
3 I've come to know in the past two years. He was
4 arrested in April of 2013, and now we're here over
5 two years later. And the person that I've come to
6 know is someone very different from a person who
7 could commit those types of offenses. And so all
8 that I could do is chalk it up to youth
9 impulsiveness. Obviously it's -- regardless of
10 what was going on in his life at that time that
11 would allow those things to happen, it doesn't make
12 it okay. But the Brian Young that I've come to
13 know is somebody who is very gentle, very calm,
14 always very respectful to me, very sincere in our
15 conversations, someone who is soft spoken, devoted
16 to his religion. He converted to Muslim, and he
17 practices that at the jail. And that's something
18 that is very important to him, and it comes up
19 frequently in our conversations. And he talks a
20 lot about family, in particular his twin brother,
21 who is here today in the courtroom to show his
22 support for Brian.

23 And so I've even had trouble in my
24 representation of Mr. Young in really understanding
25 what was going on in his life that led him to

1 commit those types of crimes, and seeing that the
2 person that I've come to know is just not that
3 individual. I think enough time has gone by, and
4 he's matured and grown up enough that the Court
5 need not worry about him committing further crimes
6 of violence, but concerns about the recidivism with
7 respect to the drugs and dealing drugs, it's a real
8 concern, and I understand that, so I'd like to
9 address that for a moment.

10 I talked a lot in my sentencing memo, so I'm
11 not going to reiterate what I said, but I think the
12 points that I'd like to make today and emphasize
13 are really what I view as Mr. Young's attempts when
14 he was released in October of 2010 I believe --
15 yeah, 2010 from state prison to turn his life
16 around. And he obviously didn't have significant
17 time to do so, because he was rearrested. But for
18 two years he was making some positive strides. So,
19 for example, when he was released from state prison
20 in 2010, he was able to find and maintain
21 employment. He worked at Tyson Foods, and he
22 worked there for approximately eight months before
23 being laid off. After that, he was employed at
24 Readers Direct, and he was there for nearly one
25 year. Again, unfortunately, he was laid off when

1 the company downsized. It wasn't until he lost
2 that job in October of 2012 that Mr. Young made the
3 decision to resort back to the way that he knew how
4 to make money the easiest. And unfortunately, it's
5 a story that this Court hears all too often.

6 You grow up in the streets. His first
7 experience in dealing drugs was at the age of 13.
8 It's a way to make money quickly and easily. It's
9 risky, and he knew that. But at the time he felt
10 that his financial situation was desperate and dire
11 enough that it was worth the risk. I mean, there's
12 really no deeper explanation than that. As the
13 Court knows, his mother had passed away
14 approximately a year prior, and he and his two
15 brothers were charged with the responsibility for
16 raising his young minor niece and nephew.

17 He was living with the niece and nephew. Prior
18 to his mother's passing, she was their primary
19 caretaker. So in taking on this role, Mr. Young
20 felt, you know, that it was incumbent upon him to
21 assist them financially. And that was the way that
22 he did it, and he did it because he was not able to
23 find a job. I think he told me that he submitted
24 approximately a dozen resumes through a temporary
25 employment agency to various companies, with no

1 luck. It doesn't make it okay. Unfortunately
2 though, it was what he felt he needed to do at the
3 time. And he did, and that's why he's here today,
4 Judge.

5 I will point out that the letters that this
6 Court received and Mr. Young's letter show a
7 different side, I think, to the person that you
8 might otherwise think stands before you from
9 reading the presentence report. Everyone who chose
10 to write letters on Brian's behalf referred to him
11 as somebody who's caring, who's helpful. One of
12 Brian's friends talked about how he assisted her
13 financially when she was down on her luck. She
14 lived with five children. She didn't have a place
15 to stay. They were cramped in with her mother.
16 Brian assisted her by giving her money, and she
17 used that money to eventually rent out an
18 apartment, and he didn't expect any payment in
19 return.

20 Another thing that's always been important to
21 Brian is his involvement in the community. He's
22 participated in community events, basketball games.
23 He worked with an organization that provided DJ
24 equipment and services to local youths for events
25 such as basketball games and picnics, so that's

1 something he's always prided himself on.

2 He was making strides, I think, and turning
3 things around and doing the best that he could for
4 somebody who had spent a substantial part of his
5 adult life in prison. And that's always going to
6 be a barrier, and he knows that that's going to be
7 a barrier to his success. But the fact that he was
8 able to come out and maintain employment, move in
9 with his family, reconnect with his two brothers,
10 reconnect with his niece and nephew, provide sort
11 of a father figure role for them, and then turn
12 into somebody that other people in the community
13 were able to look up to and to learn from, I think
14 that that does say a lot about the potential that
15 he has.

16 In his time that he served the past two years
17 at NEOCC he's tried to be productive, Judge. He's
18 participated in self-improvement courses, he's
19 participated in substance abuse classes. He
20 doesn't want this time to be wasteful. When he was
21 incarcerated in state prison, again, productive.
22 He earned his GED. He's an intelligent man. He's
23 well spoken. His letter was well written and
24 eloquent, so I do believe he has potential.

25 Lastly, Mr. Young would like for me to ask the

1 Court to recommend that he serve his time at FCI
2 McKean in Pennsylvania. The reason for that, it's
3 a medium-security facility which is where he served
4 his time previously. The reason for that, Judge,
5 is he's very interested in learning the
6 construction trade, and there's an apprenticeship
7 program there for building and maintenance repair
8 and housing repair.

9 So, he plans to be productive and use this
10 time. It's going to be a long time, no matter
11 what, to better himself, so that he doesn't
12 continue down this bad path that he talked about in
13 his letter. He really would like to honestly make
14 changes and not serve out the rest of his life in
15 prison. He is a relatively young man at 40 years
16 old. He does have a long life ahead of him
17 potentially. But this is really going to have to
18 be the turning point. Once he's released, if he's
19 arrested again, I think he knows that he at that
20 point will be an old man serving out the end of his
21 life and not just the beginning of his life in
22 prison.

23 Lastly, I'd ask that the Court consider
24 recommending the drug treatment program, the RDAP
25 program. He has participated in drug treatment in

1 the past. It's been helpful at times. He has
2 stated that he has a marijuana problem and would
3 like to address that. Thank you.

4 THE COURT: All right. Thank you,
5 Miss Scott. Mr. Young.

6 THE DEFENDANT: Yes, your Honor. First of
7 all, I'm nervous, so bear with me.

8 THE COURT: Sure.

9 THE DEFENDANT: Leslie, thank you for the
10 kind words.

11 Your Honor, I'm a work in progress. I'm not
12 going to sit here and say that I totally changed,
13 you know what I'm saying? I did change some of my
14 thinking, a lot of my ways. Again, I'm a work in
15 progress. I'm a family man. I made a mistake. I
16 can't cover that. I know what I was doing. I knew
17 I shouldn't have did it, but I did it anyway.
18 There's no excuse for that. I want to apologize to
19 the Court and to my family for my selfish actions
20 because I shouldn't have been doing this.

21 I'm a God-fearing man. You know, this morning
22 I prayed. I had a long prayer before I came here.
23 I was real nervous. I'm still nervous. I just ask
24 God to put me in the mercy of the Court. I just
25 want what's justice. If the Court can be lenient,

1 so be it. If it can't, I have to respect it. But
2 I'm sorry for my actions. I didn't mean them. I
3 won't do it again. I know for that part of me I
4 won't do it again. I wouldn't do drugs again. I
5 won't sell them again. I'm too old. I'm 40 years
6 old. I don't know how much time. I won't do it
7 again. I just ask for leniency. Thank you.

8 THE COURT: No matter how you look at it,
9 it's just not worth it, right?

10 THE DEFENDANT: No, not at all.

11 THE COURT: All right. As your attorney
12 said, your letter was an impressive letter. I
13 mean, you're a God-fearing man. You know that in a
14 different context everybody gets religion at the
15 time of sentencing, at least almost everybody,
16 right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: So it's a question of weeding
19 the sincere out from those that are trying to pull
20 the wool over your eyes, and, you know, it's a
21 tough job sometimes. But, you know, I want to hear
22 from the prosecutor, and then I need to speak with
23 Miss Blackman for a moment, and then I'll come back
24 out and I'll complete the sentence. Miss Blackman
25 is from the probation office.

1 Mr. Burgasser, what do you think here?

2 MR. BURGASSER: Your Honor, I don't have a
3 whole lot to say. I would like to point out that
4 as part of the plea agreement that was done by the
5 defense attorney, was done quite well. She also
6 had us not file an 851, which would have made him
7 two points higher, which would have been a 30-year
8 maximum. We are looking at 151 to 188 as a
9 criminal history six. I don't think that the low
10 end of 151 would be unfair or unjust in this
11 particular matter. I don't know what the Court's
12 thinking exactly. But, overall, you know, he, you
13 know, accepted responsibility and I agree that his
14 letter was quite eloquent.

15 THE COURT: Okay. All right. I mean,
16 that's -- at the low end, we're talking 12 and a
17 half years. And, you know, I mean rightly so, you
18 should be nervous, and, you know, part of what I
19 have to look at is uniformity of sentence. I have
20 to look at who the person is today, as well as who
21 the person was at the time of the crime, and I -- a
22 lot of times there is a big difference. You spent,
23 what, 26 months in jail plus already?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: But you spent a lot of time

1 previously in jail too. And, you know, that --
2 that cuts against the grain, so to speak, in terms
3 of, I mean, do you get it? And, you know, maybe
4 when you turn 40 it's time to get it.

5 But let me -- Miss Blackman, I know this is not
6 your full case, but you're familiar with Miss
7 Ferraro's impressions?

8 PROBATION OFFICER: I am, your Honor.

9 THE COURT: Okay. Let's talk for just a
10 minute.

11 (Off the record discussion.)

12 THE COURT: Okay. As Miss Scott always
13 says, a sentence should be sufficient and not
14 greater than necessary, right? And I looked at
15 what you did. And I probably would have lost sight
16 of it when you were out the last time and when you
17 worked at Tyson and when you worked at -- what was
18 the other place?

19 MS. SCOTT: Readers Direct.

20 THE COURT: I mean, not everybody does
21 that, and it's particularly difficult when you have
22 the kind of record that you have to get that kind
23 of employment. You know, and I think about when is
24 it that you might turn your life around. And I
25 think some people never get it, frankly. I think

1 Miss Scott's impressions of you and her experience
2 with you over the last couple of years are an
3 indicator maybe that while 40 is not that old, 40
4 is old. It may be a new age something, right? I
5 don't know. People keep on telling me I'm a new
6 age something, and I never really know what that
7 means. But I don't face 12 and a half years at the
8 low end. And, you know, there's lot of reasons why
9 you do, and most of it is because you made the
10 wrong choices when you had to make a decision.
11 And, you know, it could be because you were
12 immature, it could be for a lot of reasons. I
13 don't know what really lies ahead, and we talked
14 about getting religion. But I think when you talk
15 about that kind of time, it's -- given where I
16 think you are in your head and looking ahead beyond
17 that, that guideline range is too high, but you do
18 have to be held accountable. And it's the big
19 picture that I have to take into account, the good
20 and the bad. In balance, the time I'm going to
21 give you is substantial time, but it's
22 substantially less than the guideline range. It's
23 going to be ten years.

24 And I think under the circumstances, given your
25 criminal history, that's a fair sentence. You

1 know, you're going to get out and you're still
2 going to be in my view, relatively -- at a relative
3 age where you still have some good years left, and
4 I'm going to recommend McKean. I hope you get into
5 that construction program. I'll recommend the drug
6 treatment program, the 500-hour program I guess it
7 is. I'll do all of that at your request.

8 You know, I think the good outweighs the bad
9 here. I think you can make something of your life.
10 If you don't, there's going to be nothing left of
11 your life if you come back here, especially in
12 federal court. Do you understand where I'm coming
13 from?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Fair enough?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. That will be your
18 sentence. As far as supervised release is
19 concerned, three years. You have to obey all the
20 standard conditions. You cannot commit any other
21 crimes, federal, state, or local. You cannot
22 possess a firearm, dangerous device, or ammunition.
23 You cannot possess drugs. You will -- you cannot
24 be discharged from any treatment program without
25 the expressed approval of your supervision officer.

1 You will be subject to a search condition of your
2 person, property, premises, vehicle during the full
3 period of your supervised release.

4 You have to pay a 100-dollar special
5 assessment. If you don't have the funds now, you
6 can work that off through the inmate financial
7 responsibility program.

8 You will be forfeiting your interest in the
9 property that's in Section 7 of your plea
10 agreement. That will be incorporated into the
11 judgment of conviction.

12 You know, I think the good things are
13 sufficient in this case and more than probably one
14 would expect, given some of the background that
15 you've been involved in, and I think that justifies
16 a sentence that is well below the guideline range.
17 The rest is going to be up to you, okay?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. Anything to dismiss?

20 MR. BURGASSER: Nothing to dismiss.

21 THE COURT: Anything I missed,
22 Miss Blackman?

23 PROBATION OFFICER: No, your Honor. Well,
24 actually are we dismissing the complaint?

25 THE COURT: Yeah.

1 MR. BURGASSER: Yes, that basically is
2 already --

3 PROBATION OFFICER: Thank you.

4 THE COURT: Anything else? Miss Scott,
5 anything?

6 MS. SCOTT: Nothing further. Thank you,
7 Judge.

8 THE DEFENDANT: Thank you.

9 THE COURT: Okay. Thank you.

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1 CERTIFICATION
2

3 I certify that the foregoing is a
4 Correct transcription of the proceedings
5 Recorded by me in this matter.

6
7
8 s/Michelle L. McLaughlin
9 Michelle L. McLaughlin, RPR
10 Official Reporter
11 U.S.D.C., W.D.N.Y.
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